

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MCLEAN SCHOOL BUS SERVICE, INC.
Respondent

Case No.: I-00-11227

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

On April 25, 2001, the Government served a Notice of Infraction (No. 00-11227) upon Respondent McLean School Bus Service, Inc., alleging that it violated 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction alleged that the violation occurred on April 24, 2001 in the 100 block of East Capitol Street, S.E., and sought a fine of \$500.00.

Respondent filed a timely plea of Deny, and I set an evidentiary hearing for June 21, 2001. All parties appeared for the hearing. Rudolf Schreiber, the investigator who issued the Notice of Infraction, appeared on behalf of the Government and Christopher Franks, Respondent's sales and operations manager, appeared on its behalf.

Based upon the testimony at the hearing, my assessment of the credibility of the witnesses and the documents admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

On April 24, 2001, Mr. Schreiber observed a bus owned by Respondent idling its engine in the 100 block of East Capitol Street, S.E. Mr. Schreiber first observed the bus at 5:18 PM, and the engine continued running until 5:26 PM. While he was timing the running of the engine, Mr. Schreiber copied identifying information from the bus, including Respondent's name and telephone number and its Department of Transportation identifying number. On April 25, 2001, Mr. Schreiber searched the Department of Transportation's web site, and confirmed that the identification number he had copied from the bus was issued to Respondent.

The evidence offered by Respondent to rebut Mr. Schreiber's testimony was unconvincing. A tour group had hired the bus in question on April 24, and Mr. Franks admitted that buses often wait on the 100 block of East Capitol Street for tour groups that have been visiting the Capitol. Mr. Franks testified that he was not present at the time of the infraction, but that the bus driver had denied idling the engine on East Capitol Street on April 24. Mr. Franks also testified that the driver's log for April 24 stated that the driver was driving for the entire hour between 5:00 and 6:00 PM, but the log was not available at the hearing and was not introduced into evidence.

Mr. Franks' hearsay testimony was not as credible as Mr. Schreiber's, which was based upon his direct observations. Mr. Schreiber's ability to provide identifying information for the bus corroborates his testimony that the bus was present on East Capitol Street at the time alleged. The preponderance of the evidence, therefore, persuades me that Mr. Schreiber observed Respondent's bus idling its engine for more than three minutes on April 24, 2001.

III. Conclusions of Law

Because Respondent's truck idled its engine for more than three minutes while parked, it violated 20 DCMR 900.1. Respondent is liable for a fine of \$500.00 for that violation. *See* 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6/22/01**

John P. Dean
Administrative Judge